In the High Court of Judicature at Madras

Dated: 22/11/2004

Coram

The Honourable Mr.Justice V.KANAGARAJ

Crl.R.C.No.505 of 2004
and
Crl.M.P.Nos.3226 and 3227 of 2004

1. L.Narayanasamy
2. S.Rangasami
3. A.RAfiq Ahamed Shakir ... Petitioners

-Vs-

STATE :: rep.by:
The Inspector of Police
C.C.I.W. - CID
Chennai City Unit
Chennai 600 002 Respondent

Prayer: Revision is filed under Section 397 and 401 of Code of Criminal Procedure for the relief stated therein.

For petitioner : Mr.C.Venkatesalu

For respondent : Mr.V.Jayaprakash Narayanan
Government Advocate Crl. Side

:O R D E R
Petitioners as accused Nos.2 to 4 in C.C.No.7582 of 2002 has filed the above criminal revision case against the order dated 10.02.2004 passed in Crl.M.P.No.237 of 2003 in C.C.No.7582 of 2002 by the Court of XI Metropolitan Magistrate, Saidapet, Chennai.

2. The petitioner has filed the Crl.M.P.No.237 of 2001 under 239 of Code of Criminal Procedure seeking to discharge the petitioners/A2 to A4 to prevent them from harassment by the arduous trial.

3. The case of the petitioners in brief is that on the basis of the complaint lodged by the Deputy Registrar of Co-operative Societies (Credit), Adyar, Chennai, in respect of the enquiry under Section 81 of the Co-operative Societies Act, 1983, relating to the misappropriation of a sum of Rs.7,82,425/-, the respondent police have registered a case in Crime No.4 of 1999 and filed a complaint against the petitioners along with seven others in C.C.No.7582 of 2002 on the file of the Court of XI Metropolitan Magistrate, Saidapet, Chennai; that the petitioners filed discharge petition in

Crl.M.P.No.237of 2003 before the trial Court for seeking to discharge them on the ground that no prima facie case has been made out against these petitioners; that the very same Deputy Registrar, who had conducted the surcharge proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act is not a competent person to lodge Criminal complainant based on the enquiry report under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983; that even in the charge sheet, no specific charges have been made against the petitioners herein but it was simply and generally stated against these petitioners along with seven others that they have committed offences under Section 120-B r/w 408r/w 34,467, 471 r/w 467 and 477-A IPC in the very first charge; that in respect of other general charges, the averments in the charge sheet do not attract offences under Sections 408 r/w 34 IPC asagainst A3 and A$ and under Section 408 r/w 34,477-A IPC as against A2; that in this case previous sanction as per the provisions of Tamil Nadu Co-operative Societies Act, 1983 and on such averments, they pray for the prayer extracted supra.

4. Heard both.

5. Learned counsel appearing on behalf of the petitioners citing Section 164 of the Tamil Nadu Co-operative Societies Act, 1983 would argue to the effect that no case shall be entertained by any Court without the sanction being accorded by the Registrar for any act done under the said Act.

6. Learned Government Advocate on the criminal side appearing on behalf of the respondent would counter the arguments to the effect that Section 164 is only a case registered under Tamil Nadu Cooperative Societies Act, 1983 but the case registered under the Indian Penal Code and only when a case is registered under the provisions of the Tamil Nadu Co-operative Societies Act, 1983, the condition imposed under Section 164 of the Tamil Nadu Co-operative Socities Act is relevant and not otherwise and therefore, Section 164 of the Tamil Nadu Cooperative Societies Act, 1983 has absolutely no bearing on the case registered against the petitioners herein and therefore, would seek to dismiss the above criminal revision case.

7. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, for the reasons assigned above, this Court is of the view that the application filed before the lower Court under Section 239Cr.PC seeking to discharge the petitioners on such grounds alleged on the part of the petitioner has been rightly dealt with by the Court of XI Metropolitan Magistrate, Saidapet, Chennai in the manner that is required under law so as to arrive at the right conclusion to dismiss the discharge application filed by these petitioners and this Court does not see any valid or tangible reasons insisting to cause its interference and hence the following Order:-

In result,

i) the above criminal revision case does not merit acceptance and becomes liable to be dismissed and is dismissed accordingly;

ii) the order dated 10.02.2004 passed in Crl.M.P.No.237 of 2003 in C.C.No.7582 25 of 2002 by the Court of XI Metropolitan Magistrate, Saidapet, Chennai is confirmed;

Consequently, connected Crl.M.P.Nos.3226 and 3227 of 2004 are dismissed.

22.11.2004
Index: Yes
Internet Yes

kvsg

To
1) The XI Metropolitan Magistrate, Saidapet, Chennai
2) The Inspector of Police,C.C.I.W. - CID,
Chennai City Unit,Chennai 600 002
3) The Public Prosecutor, High Court, Madras 600 104.